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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,130	05/31/2006	Alain Boudou	09669/086001	1360
22511	7590	05/13/2010	EXAMINER	
OSHA LIANG L.L.P. TWO HOUSTON CENTER 909 FANNIN, SUITE 3500 HOUSTON, TX 77010			GIARDINO JR, MARK A	
			ART UNIT	PAPER NUMBER
			2185	
			NOTIFICATION DATE	DELIVERY MODE
			05/13/2010	ELECTRONIC

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docketing@oshaliang.com
buta@oshaliang.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAIN BOUDOU, LAURENT CASTILLO, and VAN-TAI NGO

Appeal 2009-013472
Application 10/581,130
Technology Center 2100

Decided: May 12, 2010

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY, III, and
JAMES R. HUGHES, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 and 3-13. Claim 2 has been cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b). An oral hearing on this appeal was held on Thursday, May 6, 2010. We Reverse.

Claim 1 is illustrative:

1. A method to control access to a sector of a flash type memory of an electronic module comprising:
 - receiving a write request to write data to an area of a partition, wherein the partition is located within the sector; and
 - making a first determination about whether an owner of the data to be written has write access to the partition of the sector, and
 - making a second determination about whether the owner has permission to erase the entire sector in which the partition is located using a rule, wherein the rule verifies that the write request does not delete data of an owner other than the owner issuing the write request; and*
 - writing the data to the partition when the first determination and the second determination allow the write request to proceed. (emphasis added).

Appellants appeal the following rejections:

1. Claims 1, 3, 5-7, 9, 10, and 12 as unpatentable under 35 U.S.C. § 103(a) over the combination of Larsen (U.S. Pat. 6,154,819) and Appell (U.S. Pat. 4,177,510).
2. Claims 4, 11, and 13 as unpatentable under 35 U.S.C. § 103(a) over the combination of Larsen, Appell, and See (U.S. Pat. 6,401,160 B1).
3. Claim 8 as unpatentable under 35 U.S.C. § 103(a) over the combination of Larsen, Appell, and Toombs (U.S. Pat. 7,177,975 B2).

ISSUE

Based upon our review of the administrative record, we have determined that the following issue is dispositive in this appeal:

Under § 103, did the Examiner err by determining that the cited references would have taught or suggested “making a second determination about whether the owner has permission to erase the entire sector in which the partition is located using a rule, wherein the rule verifies that the write request does not delete data of an owner other than the owner issuing the write request;” (Independent claim 1; *see* commensurate language recited in independent claim 5).

FINDINGS OF FACT

1. Appell teaches that “[h]ardware checks determine that the address used by a process is part of the address space assigned to the process, and if the address is outside the level of privilege assigned, then access to addressed information is denied.” (Col. 6, ll. 65-68).

2. Appell teaches:

The hardware checks that the address used by a process is part of the address space assigned to the process. If the address is outside the prescribed address space, an exception occurs. A process cannot refer to data within the address space of another process because the hardware uses the segment tables of the referencing process. Thus, there is no possibility for a process or a process group to reference an entity belonging to another process group. Generally, overlap in address space in the system occurs for those segments shared by all processes. These public segments are created by system programs which check to insure against address conflicts. Thus, segmentation protects user programs against each other and protects the operating system against user programs.

However segments shared by several processes are not protected from misuse by one of these processes. To solve this problem a ring protection method and hardware is utilized.

(Col. 9, l. 52 through col. 10, l. 2).

ANALYSIS

The Appellants argue that the Examiner has improperly equated the process protection scheme taught by Appell with the second determination step as taught by the pending claims. (App. Br. 8).

The Examiner finds that Appell teaches such a second determination when “hardware checks determine that the address used by a process is part of the address space assigned to the process.” Thus, Appell verifies access to an address space by an owner.” (Ans. 10; *see also* FF 1).

However, we are in agreement with Appellants that Appell’s aforementioned checking by hardware, at best, merely teaches or suggests “making *a first determination* about whether an owner of the data to be written has write access to the partition of the sector,” as claimed. (Claim 1, emphasis added).

In the Reply Brief, Appellants admit that Appell “discloses the first determination step recited in independent claim 1.” (Reply Br. 4, ¶¶1, ll. 3-4).

However:

Appellants respectfully assert that Appell merely considers whether a writing process has the proper ownership and hence the write access to write to a targeted address space. *As such, Appell does not consider whether a writing process has the permission to erase other address spaces outside of the targeted address space.* Further, as previously discussed, Appell

discloses a hardware check that *at best contemplates partition-wide access rather than the sector-wide scope of the second determination step.* Accordingly, for at least these reasons, Appell does not disclose or render obvious part (i) of the second determination step.

As previously mentioned, part (ii) of the second determination step recites a rule (i.e., "the write request does not delete data of an owner other than the owner issuing the write request") used in making the determination of part (i) of the second determination step as required by independent claim 1. Appellants reiterate that Appell does not use such a rule. *Rather, the hardware check determination of Appell merely determines that the address used by a process is part of the address space assigned to the process.* Accordingly, Appell does not disclose or render obvious part (ii) of the second determination step either.

(Reply Br. 5, emphasis added).

Based upon our review of the Appell reference, we agree with Appellants that Appell does not consider whether a writing process has the permission to erase other address spaces outside of the targeted address space (*Id.*), because Appell expressly teaches that "[i]f the address is outside the prescribed address space, an exception occurs." (FF 2, underline added). The claimed "permission to erase" is never specifically considered within the portions of Appell relied upon by the Examiner.

We also agree with Appellants that Appell does not fairly teach or suggest a rule that *verifies that the write request does not delete data of an owner other than the owner issuing the write request.* (Reply Br. 5; *see also* claim 1). Because Appell teaches that "there is no possibility for a process

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or a process group to reference an entity belonging to another process group” (FF 2), we are of the view that there would be no need for such a rule.

To the extent that Appell teaches public segments shared by several processes which could result in address conflicts or misuse by one of the processes, we note that Appell ensures against such address conflicts by “*system programs* which check to insure against address conflicts, and also by a *ring protection method*. (FF 2, emphasis added). We find speculation would be required as to whether Appell’s “*system programs*” and “*ring protection method*” are sufficient to fairly teach or suggest the specific recited rule of “verif[ying] that the write request does not delete data of an owner other than the owner issuing the write request.” (Claim 1). We decline to engage in speculation.

Based on the record before us, we find that the Examiner erred in finding that the cited references taught or would have suggested “making a second determination about whether the owner has permission to erase the entire sector in which the partition is located using a rule, wherein the rule verifies that the write request does not delete data of an owner other than the owner issuing the write request;” (Independent claim 1; *see* commensurate language recited in independent claim 5).

Accordingly, we reverse the Examiner’s rejection of independent claim 1 and independent claim 5 which recites commensurate limitations. Dependent claims 3, 4, and 6-13 fall therewith.

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DECISION

We reverse the Examiner's § 103 rejections of claims 1 and 3-13.

ORDER

REVERSED

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OSHA LIANG L.L.P.
TWO HOUSTON CENTER
909 FANNIN, SUITE 3500
HOUSTON, TX 77010